

**THE ICEBOUND DIPLOMACY: AN ANALYSIS OF THE GOVERNANCE IN  
THE ARCTIC THEATRE THROUGH THE LENS OF UNCLOS**

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**ABSTRACT**

*The Arctic has garnered significant global attention due to the phenomenon of global warming and the subsequent melting of its ice cap. This has facilitated the ease of engaging in regional mining, drilling, and shipping activities within the Arctic region, thereby capturing the interest of various nations worldwide. Presently, it is observed that coastal nations are actively engaged in the pursuit of extending their respective national jurisdictions towards the North Pole. This strategic endeavour is undertaken with the dual purpose of safeguarding the fragile environmental equilibrium and fostering economic prosperity. A plethora of well-known MNCs have already made investments in the Arctic. Diplomats stationed in country capitals and business magnates headquartered in thriving economic centres have made the Arctic their focus point in recent years. Governments are focusing on this area because of the effects of globalisation, including increasing commercial shipping and the development of energy resources, and climate change, including the loss of sea ice in the Arctic Basin. Not only have the Arctic states taken notice, but so have faraway places like Beijing, Berlin, and Brasilia.*

*This research paper aims to provide an in-depth analysis of the new arctic frontier through the lens of the UNCLOS. The paper shall deal with analysing and briefing about a brief history of the arctic council and its role in arctic governance. The next part shall deal with briefing the claims, treaties, agreements and arguments over the arctic. The paper then deals with the aspects of arctic governance including resource disputes, arctic high seas, the IMO's Polar Code. The paper next deals with the fracturing peace in the arctic with special reference to the Chinese Interest, the Russian Invasion of Ukraine and the enforceability of UNCLOS in Arctic Disputes. The epilogue of the paper presents a brief on the Indian approach to the Arctic Governance.*

**Keywords:** UNCLOS, Arctic, Governance, Dispute, Polar Code

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## **INTRODUCTION**

Of all the oceans, the Arctic Ocean is the smallest and the coldest.<sup>1</sup> Nevertheless, it has drawn attention from all around the world as a result of global warming and the melting of its ice cap, which has made it smoother to conduct regional mining, drilling, and shipping to and from the Arctic. Consequently, in an effort to halt environmental deterioration and pave the way for additional economic growth, coastal nations are increasingly stretching their national interests toward the North Pole.<sup>2</sup> The economy is also threatened by the warming of the Arctic, notably in the areas of development and transportation. As more icebergs collapse into the ocean, shipping will be impacted.<sup>3</sup> Due to the unpredictable melting of winter ice bridges across rivers, trucking will be impacted.<sup>4</sup>

New economic opportunities may arise despite serious environmental issues brought on by the Arctic's increased accessibility as a consequence of melting glaciers and sea ice.<sup>5</sup> New shipping lanes and the opportunity to extract more resources might open up when the ice melts by the middle of this century.<sup>6</sup> States and observers have been more interested in who owns what in the Far North as a result of potential access to fresh resources.<sup>7</sup> Unlike the virtually uninhabited continent of Antarctica, which has unresolved sovereignty issues, the Arctic is ringed by coastal States with clearly defined borders.<sup>8</sup> The law of the seas clarifies jurisdictional limits and rights and responsibilities under the law.<sup>9</sup> The Arctic has taken centre stage in the last few years in the opinions of corporate executives stationed in commercial hubs and diplomats headquartered in national capitals. Due to the effects of climate change,

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<sup>1</sup> Sarah Gibbens, "The Arctic Ocean, Explained", *National Geographic* (March 29, 2019), available at: <<https://www.nationalgeographic.com/environment/article/arctic-ocean>> (last visited on May 22, 2024).

<sup>2</sup> Bill McKibben, "A Moral Atmosphere", *Orion*, available at: <<https://orionmagazine.org/article/a-moral-atmosphere/>> (last visited on May 22, 2024).

<sup>3</sup> Julia Jacobo, "Melting Arctic Ice Will Have Catastrophic Effects on the World, Experts Say. Here's how", *abc News* (Dec. 24, 2021), available at: <<https://abcnews.go.com/International/melting-arctic-ice-catastrophic-effects-world-experts/story?id=81588333>> (last visited on May 22, 2024).

<sup>4</sup> Kern William Craig, "The Arctic Frontier in International Relations", 25 *Florida Political Chronicle* 85, (2017).

<sup>5</sup> Cathleen Kelly, "Why a Melting Arctic Could Sink The Global Economy", *American Progress* (Mar. 19, 2014), available at: <<https://www.americanprogress.org/article/why-a-melting-arctic-could-sink-the-global-economy/>> (last visited on May 22, 2024).

<sup>6</sup> Jimena Alvarez, Dmitry Yumashev & Gail Whiteman, "A Framework For Assessing The Economic Impacts of Arctic Change", 49 *Springer Link* 409 (2019).

<sup>7</sup> Oleg Anisimov, Vasily Kokorev & Yelena Zhiltcova, "Arctic Ecosystems and their Services Under Changing Climate: Predictive-Modeling Assessment" 107 *Geographical Review* 111 (2017).

<sup>8</sup> John Burgess & Lucia Foulkes, *Law Of The Sea: A Policy Maker* 59 (The Fletcher School of Law and Diplomacy, TUFTS University).

<sup>9</sup> Elizabeth A Barnes & James A Screen, "The impact of Arctic warming on the midlatitude jet-stream: Can it? Has it? Will it?", 6 *WIREs Climate Change* 280 (2015).

such as the Arctic Basin's melting sea ice, and the forces of globalization,<sup>10</sup> such as those enthusiastic to participate in commercial shipping and the development of energy resources, this region has drawn the attention of policymakers from the Arctic states<sup>11</sup> themselves as well as those in geographically distant locations like Beijing, Berlin, and Brasilia.<sup>12</sup>

One focus of this research paper is on the ways to adapt international law on Arctic fisheries to climate change. The Arctic Council, the Arctic Council System, and a separate negotiation process leading to a separate mechanism on the (Central) Arctic Ocean are all given special attention as promising methods for the international control of Arctic Ocean fisheries.<sup>13</sup> A number of significant international players have interests in the Arctic, and as a result of climate change, which compels the hunt for new resources and enhances their availability in the region, the zone is now more crucial than ever.<sup>14</sup> The distinction between "Arctic states" and "non-Arctic states"<sup>15</sup> refers to the former's territorial sovereignty and judicial authority over the region, while the latter does not.<sup>16</sup>

However, as stipulated by the UNCLOS, non-Arctic governments do have some rights, such as freedom of navigation in the EEZs of the Arctic states. The "*common heritage of mankind*" alludes to parts of the region that are not governed by any one state.<sup>17</sup> Indigenous native people and other long-term dwellers make up the scant population of the Arctic at the moment. Only 10% of the people living in the Arctic are native people, although this number is 50% in Canadian arctic and even more in Greenland. There is also a "polar paradox" because whereas the frozen seas of the Arctic are typically regarded as national, Antarctica's

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<sup>10</sup> N.R. Bates & J.T. Mathis, "The Arctic Ocean marine carbon cycle: evaluation of air-sea CO<sub>2</sub> exchanges, ocean acidification impacts and potential feedbacks", 6 *European Geosciences Union* 2444 (2009).

<sup>11</sup> Andrew J. Dyck & U. Rashid Sumaila, "Economic Impact of Ocean Fish Populations In The Global Fishery", 12 *Journal of Bioeconomics* 230 (2010).

<sup>12</sup> Oran Young, "Arctic Politics in an Era of Global Change", 19 *The Brown Journal Of World Affairs* 165 (2012).

<sup>13</sup> Erik J. Molenaar, "Arctic Fisheries and International Law: Gaps and Options to Address Them", 6 *Carbon & Climate Law Review* 63 (2012).

<sup>14</sup> Jennifer A. Francis, Stephen J. Vavrus & Judah Cohen, "Amplified Arctic warming and mid-latitude weather: new perspectives on emerging connections", 8 *WIREs Climate Change* 475 (2017).

<sup>15</sup> Evan T. Bloom, "The Rising Importance of Non-Arctic States In The Arctic", *The Wilson Quarterly*, available at: <[https://www.wilsonquarterly.com/quarterly/\\_/the-rising-importance-of-non-arctic-states-in-the-arctic](https://www.wilsonquarterly.com/quarterly/_/the-rising-importance-of-non-arctic-states-in-the-arctic)> (last visited May 22, 2024).

<sup>16</sup> Olav Schram Stokke, "Introductory Essay: Polar Regions and Multi-Level Governance", 11 *The Polar Journal* 255 (2022).

<sup>17</sup> Ali Mammadov, "China, the Arctic, and International Law", *Modern Diplomacy*, available at <<https://moderndiplomacy.eu/2022/04/22/china-the-arctic-and-international-law/>> (last visited on May 22, 2024).

land is recognized to be an international realm by international law.<sup>18</sup> According to the Australian Antarctic Division (2015), the 1959 Antarctic Treaty<sup>19</sup> “*set aside Antarctica as a scientific reserve and suspended all future territorial claims in order to focus on research*”,<sup>20</sup> whereas the 1982 UN<sup>21</sup> *Third Law of the Seas* still allows for national claims to be made regarding the Arctic waters, with Canada and Russia controlling the majority of the Arctic sea region.<sup>22</sup>

This research paper is primarily focussed on firstly explaining what is arctic council and how it has governed and helped in regional cooperation. Then this paper gives a highlight of the major treaties signed by the arctic nations. The paper also focuses on the borderline problems and challenges being faced by the various sectors like shipping, fisheries, delimitation, etc. The biggest challenge to governing the Arctic since the Cold War is the Russian invasion of Ukraine. The Arctic Council’s influence will be permanently reduced by the boycott, and security challenges in the region will remain unaddressed. Therefore, finally this paper focuses upon how the on-going Russia Ukraine conflict has threatened the geopolitical balance in the arctic, and its effect on the Arctic governance.

## **THE ARCTIC COUNCIL EXPLAINED: BRIEF HISTORY, ROLE & EFFECTIVENESS**

Citizens of the eight Arctic Council member nations make up the more than four million inhabitants of the Arctic.<sup>23</sup> After the Cold War ended, many started worrying about the denouement of pollution on the health of indigenous communities in the Arctic.<sup>24</sup> Finland was the pioneer in the 1980s in formulating the Arctic Environmental Protection Strategy

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<sup>18</sup> Zia Madani & Akiho Shibata, “International Law, Climate Change and the Antarctic Treaty System: Re-Contemplating Governance Questions Apropos Of The Mounting Challenges”, 35 *Antarctic Science* 380 (2023).

<sup>19</sup> Bob Frame, “A Typology For Antarctic Futures”, 9 *Polar Journal* 236 (2019).

<sup>20</sup> K.A. Hughes, L.R. Pertierra & D.W.H. Walton, “Area protection in Antarctica: How can conservation and scientific research goals be managed compatibly?”, 31 *Environmental Science & Policy* 127 (2013).

<sup>21</sup> Donald R. Rothwell, “The Antarctic Treaty At Sixty Years: Past, Present and Future”, 22 *Melbourne Journal of International Law* 17 (2021).

<sup>22</sup> Kern William Craig, *supra* note 1, at 86.

<sup>23</sup> Molly Watson, “An Arctic Treaty: A Solution To The International Dispute Over The Polar Region”, 14 *Ocean and Coastal Law Journal* 320 (2009).

<sup>24</sup> Lars-Otto Reiersen, Katrin Vorkamp & Roland Kallenborn, “The role of the Arctic Monitoring and Assessment Programme (AMAP) in reducing pollution of the Arctic and around the globe”, 17 *Environmental Science and Ecotechnology* 7 (2024).

(AEPS).<sup>25</sup> Eight countries, including Canada, make up the AEPS, and it was these countries plus observers and Indigenous organizations who established the four working groups.<sup>26</sup>

Canada and other member states wanted the AEPS to broaden its focus to include Arctic economic development.<sup>27</sup> Under Canada's direction, the AEPS working groups amalgamated to form a new organization to address sustainable development as a whole.<sup>28</sup> The newly formed *Arctic Council* was instituted as a symposium without "legal personality", which means that it is not an "international organization" in terms of international laws.<sup>29</sup>

The Ottawa Declaration outlines the Arctic Council's function.<sup>30</sup> Each nation creates its own set of goals during its two-year period while holding the chairperson.<sup>31</sup> The common objectives include setting standards for eco-friendly travel and cruise ship operations, creating an Arctic Ocean shipping code that is required, and tackling short-lived climate pollutants.<sup>32</sup> Projects are developed and research is done by working groups.<sup>33</sup> Initiatives related to human health are a relatively recent development in the Council's operations.<sup>34</sup> Many of the health-related efforts of the Arctic Council are housed within the *Sustainable Development Working Group* (SDWG) and the *Arctic Contaminants Action Program* (ACAP).<sup>35</sup>

As time has gone on, the council has made significant strides in bringing attention to developing concerns, preparing them for debate in policy forums, and raising their visibility

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<sup>25</sup> Md Azmeary Ferdoush & Vesa Vaatanen, "Anticipatory state identity: Understanding the Finnish state's approach to the Arctic", 54 *Wiley Area* 619 (2022).

<sup>26</sup> Kathleen Murray, "The Arctic Council: A Brief History, its Partnership with Indigenous Groups of the Arctic, and its Role in Uncovering and Addressing Health Issues in the Far North", 35 *JCHLA / JABSC* 28 (2014).

<sup>27</sup> Rob Huebert, "Canada, the Arctic Council, Greenpeace, and Arctic Oil Drilling: Complicating an Already Complicated Picture", *Canadian Global Affairs Institute Policy Paper* (Jan., 2014), available at: <[https://www.cgai.ca/canada\\_the\\_arctic\\_council\\_greenpeace](https://www.cgai.ca/canada_the_arctic_council_greenpeace)> (last visited on May 22, 2024).

<sup>28</sup> Kristofer Bergh, "The Arctic Policies Of Canada And The United States: Domestic Motives And International Context", No. 2012/1 *SIPRI Insights on Peace and Security* 15 (2012).

<sup>29</sup> *Id.*, at 19.

<sup>30</sup> Carina Keskitalo, "International Region-Building: Development of the Arctic As An International Region", 42 *Cooperation and Conflict* 200 (2007).

<sup>31</sup> Natalia Loukacheva, "The Arctic Council and Law Making", 50 *The Northern Review* 120 (2020).

<sup>32</sup> Page Wilson, "Society, Steward, or Security Actor?", 51 *Cooperation and Conflict* 60 (2016).

<sup>33</sup> I.G. Brosnan, TM Leschone, & EL Miles, "Cooperation or Conflict In A Changing Arctic?", 42 *Ocean Development and International Law* 200 (2010).

<sup>34</sup> Scott G. Borgerson, "Arctic Meltdown: The Economic and Security Implications of Global Warming", 87 *Foreign Affairs* 68 (2008).

<sup>35</sup> *Id.*, at 29.

on the policy agenda.<sup>36</sup> However, major revisions will be required to keep the council effective into the foreseeable future in light of the transformations occurring in the Arctic.<sup>37</sup>

## **CLAIMS, TREATIES, AGREEMENTS AND ARGUMENTS IN THE ARCTIC GOVERNANCE**

Canada, one of the Arctic 5 countries, has had a presence in the Arctic since 1880,<sup>38</sup> when she received the United Kingdom's last Arctic territory.<sup>39</sup> Including the area between the North Pole and the coast of the USSR, the Soviet Union has openly claimed ownership over the Arctic North since at least 1926.<sup>40</sup> Technically, the territory of Alaska extends into the United States-claimed Arctic.<sup>41</sup>

In 1972, the United States proclaimed a 3-to-12-nautical-mile continuous zone offshore.<sup>42</sup> The four UN accords from 1958 were in effect replaced by the 1982 Convention on the Law of the Sea.<sup>43</sup> The UNCLOS did not become operational, however, until 1994.<sup>44</sup> In 2001, Russia made its case to the United Nations Commission on the Limits of the Continental Shelf (CLCS) on its claim to the Arctic Ocean. In 2013 and 2014, Denmark and the CLCS had a territorial dispute over the northern and north-eastern portions of Greenland's continental shelf, respectively. As early as 2006, Norway staked a claim to the Arctic Ocean's CLCS. (United Nations, Department of Legal Affairs and Ocean Affairs (2015)).<sup>45</sup>

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<sup>36</sup> Leila Mead, "A Warming Arctic Is A Warming For The World", *IISD* (Apr. 11, 2022) available at: <<https://www.iisd.org/articles/deep-dive/arctic-warming>> (last visited May 22, 2024).

<sup>37</sup> Paula Kankaanpaa & Oran R. Young, "The Effectiveness of the Arctic Council", 31 *Polar Research* 4 (2012).

<sup>38</sup> Ivan L. Head, "Canadian Claims To Territorial Sovereignty in the Arctic Regions", 9 *McGill Law Journal* 211 (1963).

<sup>39</sup> Thomas S. Axworthy, "The Arctic: A Primary Canadian National Interest", *The Institute for Peace & Diplomacy* (May 15, 2023), available at: <<https://peacediplomacy.org/2023/05/15/the-arctic-a-primary-canadian-national-interest/>> (last visited on May 22, 2024).

<sup>40</sup> Eugene Rumer, Richard Sokolsky & Paul Stronski, "Russia in the Arctic – A Critical Examination", *Carnegie Endowment for International Peace* (Mar. 29, 2021), available at: <<https://carnegieendowment.org/research/2021/03/russia-in-the-arctica-critical-examination?lang=en>> (last visited on May 22, 2024).

<sup>41</sup> Vladimir Zenzinov, "The Soviet Arctic", 3 *The Russian Review* 70 (1944).

<sup>42</sup> Kern William Craig, *supra* note 1, at 89.

<sup>43</sup> Martin Lishexian Lee, "The Interrelation Between the Law of the Sea Convention and Customary International Law", 7 *The Interrelation San Diego International Law Journal* 414 (2006).

<sup>44</sup> Achin Vanaik, "The UNCLOS Isn't Perfect, and it's Time We Acknowledge That", *The Wire* (July 27, 2020), available at: <<https://thewire.in/world/unclos-maritime-law-flaws>> (last visited on May 22, 2024).

<sup>45</sup> *Id.*, at 90.

One of the biggest long standing boundary issues with respect to the Arctic is the Canada-United States dispute, commonly known as the Beaufort Sea Boundary Dispute.<sup>46</sup> During the initial months of the year 2016, an unprecedented surge in temperatures led to the untimely disintegration of the Beaufort Sea ice within the Arctic Ocean, deviating from its customary patterns observed throughout history.<sup>47</sup> In light of the ongoing and irreversible process of Arctic ice melting, it is evident that a consequential outcome is the increased accessibility of previously inaccessible natural resources within the Beaufort Sea region.<sup>48</sup> In the year 2020, Russia enacted legislation that engendered substantial financial incentives, amounting to billions of dollars, with the explicit purpose of fostering investment within the Arctic Ocean.<sup>49</sup> These incentives encompassed the construction of ports and factories, as well as the establishment of offshore oil and gas ventures. According to the available report, it has been duly noted that projects situated in the eastern Arctic region, in closer proximity to Canada's Beaufort Sea, are bestowed with an even more substantial incentive. The aforementioned action has engendered a mounting burden upon the federal administrations of Canada and the United States, compelling them to earnestly endeavour towards a mutually acceptable accord in their protracted and unsettled contention over the maritime demarcation of the Beaufort Sea. The significance of the maritime boundary lies in its capacity to ascertain the allocation of fishing, shipping, and oil rights within the contested area, thereby establishing the jurisdiction of the respective governing bodies involved.<sup>50</sup> The determination of the governing environmental protection policies for the disputed region shall be contingent upon the outcome of this assessment. The imperative of achieving an international accord that engenders lucidity with respect to the boundary dispute is paramount, as it serves to enhance the efficacy of the extant mosaic of Arctic governance and conservation measures.<sup>51</sup>

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<sup>46</sup> Rob Huebert, "Why Canada, U.S. must resolve their Arctic border disputes", *The Globe and Mail* (Oct. 21, 2014) available at: <<https://www.theglobeandmail.com/opinion/why-canada-us-must-resolve-their-arctic-border-disputes/article21189764/>> (last visited on May 22, 2024).

<sup>47</sup> NASA, available at: <https://earthobservatory.nasa.gov/images/88065/early-breakup-of-the-beaufort-seaice> (last visited on May 22, 2024)

<sup>48</sup> Andreas Osthagen & Clive H. Schofield, "An Ocean Apart? Maritime Boundary Agreements and Disputes In The Arctic Ocean", 11 *The Polar Journal* 327 (2021).

<sup>49</sup> John Last, "What Russia's \$300B investment in Arctic Oil and Gas Means For Canada", *CBC*, (Feb. 15, 2020), available at: <<https://www.cbc.ca/news/canada/north/russian-arctic-oil-and-gas-explained-1.5462754>> (last visited on May 22, 2024).

<sup>50</sup> Joseph F.C. DiMento, "Arctic Sustainability Law: Almost Sufficient", 47 *North Carolina Journal of International Law* 300 (2022).

<sup>51</sup> Nora Refai, "The Beaufort Sea Boundary Dispute: A Consideration Of Rights Of Inuit In Canada and The United States", 60 *Alberta Law Review* 268 (2022).

## **LAW OF THE SEA & ARCTIC GOVERNANCE**

### ***4.1. The Law of the Sea***

As pointed out by McDougal and Burke,<sup>52</sup> “*The historic function of the law of the sea has long been recognised as that of protecting and balancing the common interests, inclusive and exclusive of all people in the use and enjoyment of the oceans, while rejecting all egocentric assertions of special interest in contravention of general community interest.*”<sup>53</sup> The “*Law of the Sea*” is a body of public international law that establishes rules for the utilization and protection of the oceans, seas, and marine ecosystems and natural resources, as well as the territorial sovereignty of coastal nations.<sup>54</sup> The convention qualified customary international law whilst also establishing new maritime law and organisations.<sup>55</sup> It is best described as a framework that establishes the foundational elements of international law of the sea, which will be augmented and expanded upon by more specific international treaties and developing national norms.<sup>56</sup>

Territorial Waters, commonly referred to as the maritime belt, is the expanse of the sea that lies next to a coastal state and falls under the jurisdiction of that state, as outlined in Article 2 of the UNCLOS.<sup>57</sup> According to Article 3 of the UNCLOS, every sovereign state is free to choose its own territorial sea limits, which cannot go beyond 12 nautical miles. The Contiguous Zone is a maritime area outside the Territorial Sea of the Coastal State and is directly next to it.<sup>58</sup> Article 33 of the UNCLOS specifies that the neighbouring zone cannot exceed twenty-four nautical miles in length. The “*Continental Shelf*” is defined as the portion of the ocean bottom that stretches out from the coastline up to two hundred nautical miles from the baseline or the outer limit of the continental shelf, whichever is larger, as stated in Article 76 of UNCLOS.<sup>59</sup>

Pursuant to the UNCLOS Article 56: “*In the Exclusive Economic Zone, the coastal State has: sovereign rights for the purpose of exploring and exploiting, conserving and managing the*

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<sup>52</sup> Myres S. McDougal & William T. Burke, “Crisis in the Law of the Sea: Community Perspectives versus National Egoism”, 67 *Yale Law Journal* 550 (1958).

<sup>53</sup> Dr. S.K. Kapoor, *International Law And Human Rights* 255 (22<sup>nd</sup> ed., Central Law Agency, (2021).

<sup>54</sup> Arif Ahmed, “International Law of The Sea: An Overlook And Case Study”, 8 *Beijing Law Review* 29 (2017).

<sup>55</sup> John G. Laylin, “Emerging Customary Law of the Sea”, 10 *The International Lawyer* 677 (1976).

<sup>56</sup> Dr. Shilpa Jain, Amrit Kaur Pannu & Karan Godara, *International Law* 295 (1<sup>st</sup> ed, Allahabad Law Agency, 2022).

<sup>57</sup> Article 2 of U.N. Convention on the Law of the Sea, 1982.

<sup>58</sup> Dr. S.K. Kapoor, *supra* note 53, at 267.

<sup>59</sup> Dr. Shilpa Jain, Amrit Kaur Pannu & Karan Godara, *supra* note 56, at 307.



*natural resources, whether living or non-living, of the waters suprajacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.” Pursuant to Article 57: “The Exclusive Economic Zone shall not extend beyond 200 nautical Miles (230 statute Miles or 370 kms) from the baselines from which the breadth of the Territorial Sea is measured”.*<sup>60</sup>

#### **4.2. Arctic Boundary and Resource Disputes**

In 2001, Russia asserted a claim over its northern Continental Shelf. In 2015, that claim was revised.<sup>61</sup> In 2013 and 2014, Denmark asserted claims to the northern<sup>62</sup> and eastern continental shelves of Greenland, respectively.<sup>63</sup> Additionally, Canada is still attempting to establish the Arctic Ocean’s outer borders for its own continental shelf.<sup>64</sup> There is no geological (crustal) foundation for either Norway<sup>65</sup> or the United States to extend their territorial waters all the way to the North Pole.<sup>66</sup> But in 2006, Norway asserted jurisdiction over a region of the Arctic Ocean.<sup>67</sup>

Many agreements will be reached in the upcoming decades on the delimitation of extended continental shelf, or ECS.<sup>68</sup> Since Canada, Denmark, and Russia all have extensive ECS entitlements there, the Central Arctic Ocean, is a unique instance.<sup>69</sup> It is unknown how much

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<sup>60</sup> Dr. S.K. Kapoor, *supra* note 53, at 282.

<sup>61</sup> Atle Staalesen, “Russia Submits Claim For North Pole”, *Barents Observer* (Aug, 4, 2015) available at: <<https://barentsobserver.com/en/arctic/2015/08/russia-submits-claim-north-pole-04-08>> (last visited May 22, 2024).

<sup>62</sup> Patrick Barkham, “Why does Denmark think it can lay claim to the North Pole?”, *The Guardian* (Dec. 16, 2014) available at: <<https://www.theguardian.com/world/shortcuts/2014/dec/16/why-denmark-thinks-it-can-lay-claim-to-north-pole>> (last visited on May 22, 2024).

<sup>63</sup> Rajit Sengupta, “Denmark stakes claim over North Pole and a Large Chunk of the Arctic”, *Down To Earth* (Dec. 17, 2014) available at: <<https://www.downtoearth.org.in/news/denmark-stakes-claim-over-north-pole-and-a-large-chunk-of-the-arctic-47870#:~:text=Published%3A%20Wednesday%2017%20December%202014,also%20includes%20the%20North%20Pole.>> (last visited on May 22, 2024).

<sup>64</sup> Associated Press in Toronto, “Canada to claim north pole as its own”, *The Guardian* (Dec. 10, 2013), available at: <<https://www.theguardian.com/world/2013/dec/10/canada-north-pole-claim>> (last visited on May 22, 2024).

<sup>65</sup> Erik Franckx, “Should The Law Governing Maritime Areas In The Arctic Adapt To Changing Climatic Circumstances?”, 41 *California Western International Law Journal* 406 (2011).

<sup>66</sup> Caitlyn Antrim, “Geography and Jurisdiction In The Maritime Arctic”, 107 *Geographical Review* 30 (2017).

<sup>67</sup> Kern William Craig, *supra* note 1, at 93.

<sup>68</sup> Stephanie Holmes, “Breaking The Ice: Emerging Legal Issues in Arctic Sovereignty”, 9 *Chicago Journal of International Law* 332 (2008).

<sup>69</sup> Jon D. Carlson, Christopher Hubach, Joseph Long, Kellen Minter & Shane Young, “Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims”, 33 *The SAIS Review of International Affairs* 33 (2013).

the US is entitled to.<sup>70</sup> Russia included two addenda to its proposal about the Arctic Ocean<sup>71</sup> on March 31, 2021, extending its avouch to further encroach upon that of Canada and Denmark. This might eventually pressure Canada. Denmark has the option to add to its application, expanding the regions where its rights overlap those of Russia and Canada.<sup>72</sup>

There is no mandatory technique of delimitation for continental shelves under international law.<sup>73</sup> Article 83 states that the only prerequisite is to arrive at a reasonable decision. Countries are urged to utilize “*whatever peaceful measures of their own discretion*” to settle a disagreement according to Article 280 of Section XV of the Convention. Additionally, the Convention states that nations shall try every possible dispute resolution method before turning to the judicial process.<sup>74</sup> In the Arctic, there are three main kinds of problems: bilateral maritime boundary disputes, Arctic Ocean issues, and straits status concerns.<sup>75</sup>

The Arctic is currently experiencing two bilateral boundary disputes. One is in the Bering Sea between the USA and Russia,<sup>76</sup> the other is in the Beaufort Sea between the USA and Canada. The median (or equidistance) concept was used in the majority of situations to the final agreements.<sup>77</sup>

### 4.3. Arctic High Seas

High seas freedom is a time-honoured principle. The relevance of this concept has grown and expanded in the contemporary era. When referring to the ocean, the word “high seas” refers to the area beyond the borders of any nation’s territorial sea or its internal waterways.<sup>78</sup> The

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<sup>70</sup> Julia Hager, “Russia’s Claim to North Pole Territory Officially Confirmed”, *Polar Journal* (Feb. 21, 2023), available at: <<https://polarjournal.ch/en/2023/02/21/russias-claim-to-north-pole-territory-officially-confirmed/>> (last visited on May 22, 2024).

<sup>71</sup> Valentin A. Koshkin, “Delimitation of the Continental Shelf in the Central Arctic Ocean: Is It Possible Nowadays?”, 13 *Arctic Review on Law and Politics* 400 (2022).

<sup>72</sup> Ekaterina Antsygina, “The Delimitation of the Extended Continental Shelves in the Central Arctic Ocean”, *East West Centre* (April 23, 2021), available at: <<https://www.eastwestcenter.org/node/39811>> (last visited on May 22, 2024).

<sup>73</sup> Jian-Jun Gao, “International Rules On The Continental Shelf Delimitation”, *International Journal of Maritime Affairs and Fisheries* 100 (2005).

<sup>74</sup> Trupti Shetty, “A Comprehensive Analysis of UNCLOS Dispute Resolution Mechanisms”, *VIA Mediation & Arbitration Centre*, available at: <<https://viamediationcentre.org/readnews/MTQ4MA==/A-Comprehensive-Analysis-of-UNCLOS-Dispute-Resolution-Mechanisms>> (last visited May 22, 2024).

<sup>75</sup> Ying Cai, “International law principles of continental shelf delimitation and Sino-Japanese East China Sea disputes”, *World Maritime University Dissertations* 50 (2006).

<sup>76</sup> Camille M. Antinori, “The Bering Sea: A maritime delimitation dispute between the United States and the Soviet Union”, 18 *Ocean Development & International Law* 30 (2009).

<sup>77</sup> Viatcheslav Gavrilov, “Canada and the Russian Federation: Maritime Boundaries and Jurisdiction in the Arctic Ocean”, 13 *Arctic Review on Law and Politics* 222 (2022).

<sup>78</sup> Dr. S.K. Kapoor, *supra* note 53, at 286.

core of high seas independence is that no state may gain authority over sections of them. Although this is usually the case, the application of the theories of recognition, acquiescence, and prescription decides whether specific regions of the high seas bordering the territorial waters of coastal nations can be subject to their sovereignty through long-standing exceptions from other states.<sup>79</sup> This stance was also legally emphasized in the *Anglo-Norwegian Fisheries (United Kingdom v. Norway) Case*.<sup>80</sup>

During a summit held in Oslo, Norway, in the summer of 2016, the five Arctic Coastal States issued a collective statement concerning fishing operations in the central Arctic Ocean. This statement emphasises the current impracticability of commercial fishing in this region, which raises doubts about the relevance of a regional fisheries management organization. This decision ensures that all future fishing endeavours will adhere to ethical standards and be guided by scientific recommendations, showcasing a meticulous and knowledgeable approach. Furthermore, the coastal states have demonstrated their dedication to respecting the sovereignty of other nations and fostering global cooperation to safeguard Arctic fish stocks, resulting in mutual benefits for all parties concerned.<sup>81</sup>

#### ***4.4. The Polar Code***

The Polar Code is a complex regulatory framework that the International Maritime Organisation has issued. It establishes rigorous standards for commercial vessels that go through Arctic seas. The design of the ship, the personnel on board, their education and development, the tools they use, the routes they take, the measures they adopt to prevent pollution, and the rules they follow while communicating are all part of this extensive code.<sup>82</sup> These requirements may be found in the following categories: design, crewing, training, equipment, and itinerary planning.<sup>83</sup> Even though there are IMO standards that set basic requirements that are applicable worldwide, the Polar Code is still important since ships that operate in polar regions could anticipate confronting environmental and navigational problems that go beyond those faced in other places. This is why the Polar Code is so important. Beyond what is mandated by law, the Polar Code incorporates additional, non-

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<sup>79</sup> Dr. Shilpa Jain, Amrit Kaur Pannu & Karan Godara, *supra* note 56, at 322.

<sup>80</sup> *Anglo-Norwegian Fisheries (United Kingdom v. Norway) Case*, Order, (1951) I.C.J. 8.

<sup>81</sup> John Burgess & Lucia Foulkes, *supra* note 2, at 64.

<sup>82</sup> Espen Engtro, "A discussion on the implementation of the Polar Code and the STCW Convention's training requirements for ice navigation in polar waters", 15 *Journal of Transportation Security* 50 (2022).

<sup>83</sup> Oystein Jensen, "The International Code for Ships Operating in Polar Waters: Finalization, Adoption and Law of the Sea Implications", 7 *Arctic Review on Law and Politics* 77 (2016).

binding safety and environmental protection criteria. By all accounts, the Polar Code satisfies the requirements of “*generally accepted international rules and standards*” (LOSC Article 211), insofar as environmental protection is concerned.<sup>84</sup>

## **THE FRACTURING OF THE PEACE OF THE ARCTIC GOVERNANCE**

### ***5.1. The Chinese Interest***

As mentioned in the UNCLOS, non-Arctic states do have some rights, such as freedom of navigation in the EEZs of the Arctic states.<sup>85</sup> The region draws nations outside the Arctic Circle due to its attraction, with China being one of the most interested. The country’s desire for greater resources can be used to justify China’s interest in the area.<sup>86</sup> China’s involvement in the area was first viewed as a challenge to the territorial sovereignty of the US, Canada, and Russia.<sup>87</sup> China became an observer in the Arctic Council after formally acknowledging the territorial sovereignty of the Arctic states over the area.<sup>88</sup>

China released a White Paper in 2018 describing its plans for the Arctic. The White Paper deems China to actively participate in Arctic governance and to continue to abide by all pertinent treaties and agreements. China has made it clear that it has no plans to challenge any Arctic states and that it will work with them to handle the region peacefully. The self-description of China as a “*near-Arctic*” state in the White Paper, which highlighted China’s proximity to the Arctic Circle and was criticized by the US but supported by Russia and Canada, stands out as the White Paper’s most notable feature.<sup>89</sup>

China has not broken the law in the Arctic significantly as of now. On whether China will break international law in the Arctic, experts disagree. One of the defenses is that because

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<sup>84</sup> *Id.*, at 65.

<sup>85</sup> Eleanor Freund, “Freedom of Navigation in the South China Sea: A Practical Guide”, *Harvard Kennedy School* (June, 2017), available at: <<https://www.belfercenter.org/publication/freedom-navigation-south-china-sea-practical-guide>> (last visited on May 22, 2024).

<sup>86</sup> Elizabeth Wishnick Dr., “China’s Interest and Goals in the Arctic: Implications for the United States”, *Monographs: USAWC Press* 36 (2017).

<sup>87</sup> Anu Sharma, “China’s Polar Silk Road: Implications for the Arctic Region”, *Journal of Indo-Pacific Affairs* (Oct. 25, 2021), available at: <<https://www.airuniversity.af.edu/JIPA/Display/Article/2820750/chinas-polar-silk-road-implications-for-the-arctic-region/>> (last visited on May 22, 2024).

<sup>88</sup> Timo Koivurova, “China & the Arctic: Why The Focus On International Law Matters”, 10 *The Yearbook Of Polar Law Online* 428 (2019).

<sup>89</sup> Ali Mammadov, *supra* note 5.

China has repeatedly broken the law, especially during the South China Sea conflict,<sup>90</sup> it is likely to do so again. China has generally disregarded objections despite the United Nations classifying its conduct in the South China Sea as hostile.

### ***5.2. The Russian Invasion of Ukraine***

A Pandora's box of global repercussions had already been unlocked by Russia's invasion of Ukraine. The invasion's repercussions on Arctic government, research, and economic activity are currently being felt, and they will only grow over the next several days and beyond. One such direct result and indication of a quickly shifting and difficult foundation for Arctic governance is the seven remaining Arctic governments denouncing Russia and temporarily stopping all Arctic Council-related activity.<sup>91</sup>

The Arctic Council, the major international platform for cooperation in the Arctic, has been suspended as a result of Russia's aggressiveness there. Ironically, Russia was scheduled to serve as chair of the Arctic Council until 2023. The arctic peace has been hampered as a result of this one action by Russia, which has in turn led to an increase in hostility. Russia has warned that the exercises being carried out by NATO military in the Arctic might result in "unintended occurrences". The United States has sent F-35 fighter fighters to Alaska and is doing drills there.<sup>92</sup>

There have been rumours that the West may substantially redefine Arctic administration by creating a new international organization without Russia, dubbed as "Nordic Plus", in response to the seven member nations' boycott of the Arctic Council. The seven objecting states and the indigenous people of the Arctic might participate in this forum, theoretically (including those from Russia). Despite having common ideals and governmental standards, Nordic Plus would lack the institutional credibility and advancement that the Arctic Council has promoted.<sup>93</sup>

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<sup>90</sup> Sakamoto Shigeki, "The Global South China Sea Issue", *The Diplomat* (July 4, 2021), available at: <<https://thediplomat.com/2021/07/the-global-south-china-sea-issue/>> (last visited on May 22, 2024).

<sup>91</sup> Michael Sfraga, "Ukraine and the Arctic: Perspectives, Impacts and Implications", *Wilson Centre*, (March 14, 2022), available at: <<https://www.wilsoncenter.org/event/ukraine-and-arctic-perspectives-impacts-and-implications#:~:text=There%20is%20a%20wide%20array,and%20integrated%20we%20really%20are>> (last visited on May 22, 2024).

<sup>92</sup> Umair Irfan, "Russia's Invasion of Ukraine is Fracturing the Delicate Peace in the Arctic", *Vox*, (April 25, 2022), available at: <<https://www.vox.com/22993194/russia-ukraine-invasion-arctic-council-climate-change>> (last visited on May 22, 2024).

<sup>93</sup> Daniel McVicar, "How the Russia-Ukraine War Challenges Arctic Governance", *Council On Foreign Relations* (May 10, 2022), available at: <<https://www.cfr.org/blog/how-russia-ukraine-war-challenges-arctic-governance>> (last visited on May 22, 2024).

### 5.3. *Enforceability of UNCLOS in Arctic Disputes*

As mentioned earlier, the Arctic is in fact been divided into 8 states that claim their territorial rights within this area. These states include United States, Norway, Denmark, Sweden, Canada, Finland, Iceland, Russia and Canada. Back in 1935, Canada became the first country to claim vast land areas in this region that was shortly followed by the Soviet Union making similar claims in 1937. The region received great significance during the infamous cold war period because of its potential to serve as the base for submarine launched-nuclear weapons in this area. This eventually resulted in ratifying UNCLOS treaty at the end between the Arctic states. However, the increased pace of global warming has resulted in reduced ice-caps in the region<sup>94</sup> and as a result of the same, the tensions between the Arctic states seems to have increased. As a result, Article 234 was added, which establishes a special legal framework for ice-covered waters around the world.<sup>95</sup> This framework gives coastal governments the ability to create and implement non-discriminatory restrictions for boats that are traveling through any ice-covered regions that are located inside their respective EEZs in an puissance to ostracize marine pollution. The UNCLOS and its inclusion of Article 234, notwithstanding its lack of clarity addressing the Arctic, have been sufficient to appease the governments of the Arctic since more than twenty years ago. The issues that climate change will present cannot be solved by applying the letter of the law of the sea to the Arctic. Importantly, the Convention cannot fully regulate shipping in the Arctic due to UNCLOS's ambiguity on ice-covered areas. Such ambiguities pave way for nations to mould the interpretation in their favour. Particularly Russia and Canada have cited Article 234 to support their claims to control over the Northwest Passage (NWP) and Northern Sea Route (NSR), respectively.

The permanence of these ice-covered regions is being called into doubt by climate change, and the application of Article 234 may change in the future depending on how much ice is covered along Arctic routes. Notably, it is questionable if the NSR, NWP, or other marine areas bordering coastal states can still be regarded as ice-covered as the ice cover in Arctic waters recedes more and more each year.<sup>96</sup>

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<sup>94</sup> Daniel Glick, "The Big Thaw", *National Geographic*, available at: <<https://www.nationalgeographic.com/environment/article/big-thaw>> (last visited on May 22, 2024).

<sup>95</sup> Ksenjia Hanacek, Markus Kroger, Arnim Scheidel, Facundo Rojas & Joan Martinez-Alier, "On thin ice – The Arctic commodity extraction frontier and environmental conflicts", 191 *Ecological Economics* 11 (2022).

<sup>96</sup> Jan Jakun Solski, "The Genesis of Article 234 of the UNCLOS", 52 *Ocean Development & International Law* 14 (2020).

## **THE INDIAN POLICY ON THE ARCTIC**

As far as Indo-Arctic ties are concerned, 1920 was the defining year. It was at that time that India signed the Svalbard Treaty in Paris, thus establishing diplomatic relations with the Arctic.<sup>97</sup> Then in 2007, with an emphasis on the effects of global warming in the Arctic, India began a new research initiative. In 2013, India became one of six countries to get Observer status in the Arctic Council. India was re-elected to the observer status in 2019. The Gandhinagar Declaration is also a major contribution of India to the Arctic Council.<sup>98</sup>

In March 2022, India unveiled its own policy for the Arctic, focussing on smitting climate change.<sup>99</sup> The policy provides a written record of India's involvement in the arctic, which dates back to the Svalbard treaty it ratified in Paris in February 1920.<sup>100</sup> India's "*Arctic Policy*", titled "*India and the Arctic: building a partnership for sustainable development*", was launched by the government with the hope of strengthening the country's ties to the resource-rich, rapidly developing area. The policy's other goal is to prevent climate change, which is happening three times as rapidly as the rest of the world and safeguard the ecosystem there.

It moreover aims to research the interconnections between the polar regions and the Himalayas, relying on both scientific and conventional knowledge, and to strengthen collaboration between India and the nations of the Arctic under different Arctic forums. In 2021, India's Defense Minister Rajnath Singh pledged to respect all countries' rights under the UNCLOS. India is dedicated to preserve its legal rights and interests in its territorial seas and EEZ, while embracing rule-based maritime systems as specified by UNCLOS, 1982.

The vested interest of India in the Arctic Sphere and the constant urge to strengthen its presence there through scientific research is the main cause behind India's comprehensive and multifaceted approach to the region. Also considering the rapid approaches made by

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<sup>97</sup> Manish Singh, "India in the Arctic: Legal Framework and Sustainable Approach", *The Arctic Institute* (Jan. 9, 2024), available at: <<https://www.thearcticinstitute.org/india-arctic-legal-framework-sustainable-approach/>> (last visited on May 22, 2024).

<sup>98</sup> Abhijit Singh & Andreas Osthagen, "India's Arctic Imperative", *The Hindu* (Apr. 16, 2024), available at: <<https://www.thehindu.com/opinion/op-ed/indias-arctic-imperative/article68067583.ece>> (last visited on May 22, 2024).

<sup>99</sup> PTI, "India unveils Arctic policy, eyes S&T research in resource-rich region", *The Week* (Mar. 19, 2022), available at: <<https://www.theweek.in/news/sci-tech/2022/03/19/india-unveils-arctic-policy--eyes-s-t-research-in-resource-rich-.html>> (last visited on May 22, 2024).

<sup>100</sup> Express Web Desk, "India unveils its Arctic Policy, focuses on combating climate change", *Indian Express* (March 18, 2022), available at: <<https://indianexpress.com/article/india/india-arctic-policy-climate-change-mineral-resources-7825518/>> (last visited on May 22, 2024).

other Asian states, there is an increased need for India to be pro-active in this field. For example – The 2008 reports by the US Geological Survey briefing about how the arctic stands as the goldmine for proportionately 90 billion barrels of oil, 1669 trillion cubic feet of natural gas, and 44 billion barrels of liquified natural gas,<sup>101</sup> fueled the hopes and dreams of the Korean expansion over Arctic. Since then, Korea has passed various plans and measures for better arctic governance.<sup>102</sup>

## **CONCLUSION**

As a result of global warming, the Arctic is gaining recognition as a fruitful region for resource exploration, leading to increased demand from major international corporations. The updated UNCLOS thoroughly covers important topics including boundary delineation, navigation rights, archipelagic status and transit regimes, exclusive economic zones, jurisdiction over the continental shelf, deep seabed mining, marine environmental preservation, and dispute resolution, demonstrating a comprehensive understanding of the subject matter. Considering the rights of indigenous Arctic peoples alongside the mandates of the UN is crucial for achieving sustainable ocean use. Coastal governments have the responsibility of governing different maritime zones, such as territorial seas, exclusive economic zones, continental shelves, outer continental shelves, and adjacent high seas. These nations must protect their sovereign rights in all waters under their jurisdiction.

The region's economic potential is poised to encourage greater collaboration in the fishing, shipping, drilling, and mining sectors. This growing activity will require stronger environmental management efforts to reduce regional environmental risks. The 'Arctic 5' or a potentially expanded Arctic Council (Arctic 8-to-12) have a unique advantage in effectively utilising and safeguarding the Arctic Ocean and seabed. In addition, they possess the ability to establish “*best practices*” that could become global exemplars when other regions adopt them. In order to achieve a harmonious equilibrium between safeguarding the Arctic ecosystem and preserving the indigenous way of life, it is imperative for all relevant stakeholders to engage in collaborative endeavours. The present endeavour necessitates the inclusion of all states that perceive themselves as prospective contenders for the hand of the

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<sup>101</sup> Kenneth J. Bird, “Circum-Arctic Resource Appraisal: Estimates of Undiscovered Oil and Gas North of the Arctic Circle”, *USGS*, available at: <<https://pubs.usgs.gov/fs/2008/3049/fs2008-3049.pdf>> (last visited on May 22, 2024).

<sup>102</sup> Dongmin Jin, Won-sang Seo & Seokwoo Lee, “Arctic Policy of the Republic of Korea”, 22 *Ocean And Coastal Law Journal* 86 (2017).



Arctic maiden. Due to the momentous phenomenon of historical ice melting in the Arctic realm and the subsequent surge in global focus on Arctic administration, it is becoming increasingly apparent that an international accord aimed at resolving all boundary disputes is an inexorable outcome.

Moreover, this approach should be adopted to foster enhanced governance of the Arctic region. Significantly, as posited by a multitude of esteemed leaders and organizations, it is imperative to acknowledge that indigenous communities, whose interests would be impacted by prospective legislation or international accords pertaining to the Arctic and its demarcations, possess a rightful entitlement to partake in the deliberative process alongside other nations engaged in negotiation or dispute. This is owing to the fact that such legislative endeavours shall inevitably exert a direct influence upon the indigenous communities.